

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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U.S. DISTRICT COURT
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BY _____

JOHN WESLEY STOUT

§

VS.

§

CIVIL ACTION NO. 4:04CV182

SHERIFF TERRY BOX, ET AL.

§

**ORDER ADOPTING
REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

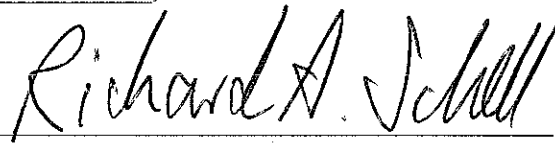
The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Don D. Bush who issued a Report and Recommendation concluding that this civil rights complaint should be dismissed without prejudice for failure to prosecute. The Plaintiff has filed objections to the Report and Recommendation. The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendation for the disposition of such action, has been presented for consideration. The Court makes the following *de novo* review of the objections raised by the Plaintiff to the Report:

In his objection, the Plaintiff argues that he failed to follow the Magistrate Judge's order to file an amended complaint because he is seeking the appointment of counsel. "There is no automatic right to the appointment of counsel in a section 1983 case. Furthermore, a district court is not required to appoint counsel in the absence of "exceptional circumstances" which are dependent on the type and complexity of the case and the abilities of the individual pursuing that case." *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). Although Plaintiff alleges that he is unable to file an amended complaint due to his incompetence, he was, during the pendency of this Complaint treated and released from Vernon State Hospital, found guilty of burglary and sentenced to thirty years. His incompetence to stand trial has been determined by a state court. He has not shown his abilities or

competence to be a real issue in this Court. The Plaintiff was ordered to file an amended complaint because the facts alleged were vague and inadequate. In order for the Court to determine if the Plaintiff was eligible for the appointment of counsel, it was necessary for the Plaintiff to file an amended complaint which alleged definite acts and incidents. The Plaintiff chose not to do so. Therefore, the Plaintiff deliberately disobeyed a Court's Order. Consequently, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the civil rights complaint is DISMISSED without prejudice. All motions by either party not previously ruled on are hereby DENIED.

SIGNED this 19th day of August, 2005.


RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE